

her and lifting it at hip level when it shifted while in the performance of duty. She stopped work on May 21, 2018.

In a June 13, 2018 duty status report (Form CA-17), Dr. Tushar Sharma, Board-certified in internal medicine, noted traumatic injuries to appellant's back and right shoulder and referenced resultant lower back and right shoulder pain radiating into her right lower extremity. In a referral order and pain management visit summary of even date, he diagnosed her with lumbar radiculopathy and referred her to physical and interventional therapy. Additionally, Dr. Sharma indicated in a June 13, 2018 note that appellant could return to light-duty work on June 27, 2018.

By development letter dated June 25, 2018, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and asked her to complete a questionnaire and provide further details regarding the circumstances of the claimed May 16, 2018 employment incident. It also requested a narrative medical report from her physician which provided a rationalized medical explanation as to how the alleged employment incident caused her diagnosed condition. OWCP afforded appellant 30 days to respond.

In a May 21, 2018 medical report, Kevin Slayton, a physician assistant, noted appellant's low back pain and right lower extremity symptoms that began on May 19, 2018 after she lifted a heavy package at work on May 17, 2018. He recounted that she experienced intense pain in her right buttock and right posterolateral thigh pain while she was vacuuming. Mr. Slayton reviewed her medical history, reporting that she previously underwent a right L4-5 microdiscectomy in March 2017 and that, after the surgery, she still experienced pain in her lower back and right lower extremity, but had returned to work. On review of a magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine, he indicated recurrent disc herniation at L4-5 on the right. Mr. Slayton opined that she was suffering from right L4 radicular symptoms due to her disc herniation and noted that her symptoms began while lifting a heavy package at work. He diagnosed lumbar postlaminectomy syndrome, low back pain, prolapsed lumbar intervertebral disc, degeneration of lumbar intervertebral disc, and lumbosacral spondylosis without myelopathy.

In a June 13, 2018 medical report, Dr. Sharma evaluated appellant's symptoms related to her lower back pain. He diagnosed lumbar radiculopathy, degeneration of lumbar intervertebral disc, and low back pain.

A June 21, 2018 letter with an illegible signature instructed appellant to report back to Dr. Stephen D. Brown after she received back injections from Dr. Sharma and thereafter, she would be able to further discuss options for surgery.

By decision dated July 26, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It noted that she failed to respond to OWCP's June 25, 2018 questionnaire.

On July 31, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. In an attached response to OWCP's questionnaire, she explained that she was lifting a box in the post office to her hip level. When appellant pulled the box closer to her, the 250 coils of copper wire inside the package shifted and were heavy, causing her to drop the package. She indicated that she felt extreme pain down her right side as the package pulled her down when she tried to lift it. Appellant continued to work the next two days with her postmaster's help, but her pain continued to become more intense to the point she could not get out of bed on Saturday morning. She also referenced a prior injury that she sustained in 2013.

In an August 1, 2018 return to work form, Dr. Sharma indicated that appellant could return to full-duty work on August 2, 2018.

In an August 8, 2018 medical report, Dr. Timothy Burke, a Board-certified neurosurgeon, evaluated appellant's symptoms and noted her history of a previous right L4-5 disc herniation and microdiscectomy. He opined that it was possible that her proximal right leg pain was due to an extraforaminal disc at L3-4, but her symptoms were somewhat atypical, which suggested a primary issue at the hip. Dr. Burke opined that appellant's injury "sounded like a work-related injury" caused when she lifted a heavy crate of copper wire. He further opined that it was likely that this action exacerbated her preexisting condition. Dr. Burke diagnosed a prolapsed lumbar intervertebral disc and pain in the right lower limb. In a medical note of even date, he recommended that appellant remain out of work until August 23, 2018.

By decision dated December 7, 2018, a hearing representative set aside the July 26, 2018 decision and ordered OWCP to prepare a statement of accepted facts and solicit a new report from appellant's treating physician. Specifically, the hearing representative requested that Dr. Burke should discuss the mechanism of injury and offer a reasoned opinion on which diagnoses bear a relationship with the May 16, 2018 employment incident and appellant's physician assistant should provide further clarification regarding appellant's pain after vacuuming.

In an August 23, 2018 medical report, Dr. Burke explained that appellant's condition had worsened and recommended surgical treatment for her right L4-5 disc herniation. He also noted that her symptoms were somewhat out of proportion to the relatively small size of the disc herniation. Dr. Burke diagnosed a prolapsed lumbar intervertebral disc and discussed surgical options with appellant.

In a January 21, 2019 medical report, Carol Jerosimich, a physician assistant, indicated that appellant presented to review an MRI scan of her lumbar spine that was requested due to her right buttock and lateral right thigh pain. She indicated that appellant underwent an L4-5 extraforaminal microdiscectomy on September 12, 2018 and also noted appellant's March 2017 L4-5 microdiscectomy. Ms. Jerosimich assessed a history of L4-5 disc herniation and lumbar spondylosis and provided appellant with a plan for treatment.

In a May 13, 2019 letter, Dr. Burke recounted appellant's history of injury and indicated that she was treated for a lumbar disc herniation and underwent surgical treatment for an extraforaminal on September 12, 2018. He opined that the work events were causally related to her lumbar disc herniation and subsequent need for surgical treatment.

By decision dated June 4, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her diagnosed lumbar conditions were causally related to the accepted May 16, 2018 employment incident.

On June 20, 2019 appellant requested reconsideration of OWCP's June 4, 2019 decision.

Appellant submitted medical evidence referencing treatment she received from July 24, 2017 to August 23, 2018.

By decision dated September 9, 2019, OWCP affirmed its June 4, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,² that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁶ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar injury causally related to the accepted May 16, 2018 employment incident.

In his August 8, 2018 medical report, Dr. Burke noted appellant's history of a previous L4-5 disc herniation and microdiscectomy. He opined that he believed that her injury "sounded like a work-related injury" caused when she lifted a crate of heavy copper wire and that it was likely that this action exacerbated her preexisting condition. On evaluation Dr. Burke opined that it was possible that appellant's proximal right leg pain was due to an extraforaminal disc at L3-4, but her symptoms were somewhat atypical, which suggested a primary issue at the hip. He diagnosed a prolapsed lumbar intervertebral disc and pain in the right lower limb. While Dr. Burke provided an affirmative opinion on causal relationship, he failed to specifically differentiate between the effects of the preexisting disc herniation and the symptoms related to the May 16, 2018 employment incident.¹¹ The Board has held that a well-rationalized opinion is particularly warranted when there is a history of preexisting condition, as in this case.¹² Without explaining how lifting a crate caused or contributed to appellant's diagnosed condition, Dr. Burke's report is insufficient. Additionally, his statements that her injury "sounded like a work-related injury," that it was "likely" her work activity that exacerbated her preexisting condition and that it was "possible" her proximal leg pain was due to an extraforaminal disc at L3-4 are speculative and equivocal, and thus insufficient to establish her burden of proof.¹³ For these reasons, Dr. Burke's August 8, 2018 medical report is insufficient to establish appellant's burden of proof.

In his August 23, 2018 medical report, Dr. Burke diagnosed a prolapsed lumbar intervertebral disc and recommended surgical treatment to treat appellant's worsening symptoms without providing an opinion on causal relationship. The Board has held that medical evidence

⁹ *I.J.*, 59 ECAB 408 (2008).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹¹ *Id.*

¹² *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

¹³ The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); see *Ricky S. Storms*, 52 ECAB 349 (2001) (While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁴ Dr. Burke also failed to discuss whether appellant's previous injuries or preexisting conditions contributed to her current lumbar conditions.¹⁵ For these reasons, his August 23, 2018 report is insufficient to meet her burden of proof.

In his May 13, 2019 letter, Dr. Burke recounted appellant's May 16, 2018 work injury and subsequent surgical treatment for lumbar disc herniation. He opined that the work events were causally related to her lumbar disc herniation and subsequent need for surgical treatment. While he provided an affirmative opinion which supported causal relationship, Dr. Burke did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.¹⁶ A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.¹⁷ For this reason, Dr. Burke's May 13, 2019 letter is also insufficient to meet appellant's burden of proof.

Dr. Sharma's June 13, 2018 notes referenced appellant's lower back pain and pain in her right shoulder radiating down to her right lower extremity. He diagnosed her with lumbar radiculopathy, degeneration of lumbar intervertebral disc, and low back pain. As stated previously, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁸ For this reason, Dr. Sharma's June 13, 2018 notes are insufficient to meet appellant's burden of proof.

Appellant also submitted medical reports from Mr. Slayton and Ms. Jerosimich, physician assistants. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.¹⁹ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.²⁰

Additional medical evidence referenced dates of treatment from July 24, 2017 to August 23, 2018. As this evidence predated the May 16, 2018 employment incident, it is irrelevant

¹⁴ *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁵ *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989). *Supra* note 10 at Chapter 2.805.3e (January 2013). *See supra* note 10 at *R.D.*

¹⁷ *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

¹⁸ *Supra* note 14.

¹⁹ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

²⁰ *See M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *Supra* note 10 at Chapter 2.805.3a(1) (January 2013).

to the instant claim.²¹ Further, the remaining evidence dated after the May 16, 2018 date of injury fails to offer an opinion regarding the cause of appellant's condition.²²

As appellant has not submitted rationalized medical evidence establishing that her lumbar injury is causally related to the accepted May 16, 2018, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar injury causally related to the accepted May 16, 2018 employment incident.

²¹ *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

²² *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board